



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

**Board of Mechanical Rules
Okemos Office Building
2501 Woodlake Circle
Conference Room 3
First Floor
Okemos, Michigan
March 19, 2008
9:00 a. m.**

- A G E N D A -

1. Call to Order and Determination of Quorum Chairperson
2. Approval of January 23, 2008 Minutes (pages 3 – 6) Chairperson
3. Applicant for Registration (page 7) T. Barry
Jeffrey A. Smith
4. Old Business T. Barry
Document M-07-29 David Vermillion (tabled 11/14/07 & 01/23/08) (pages 8-17)
Document M-07-30 Reginald T. McKinney (tabled 11/14/07 & 01/23/08) (pages 18-27)
5. New Business Chairperson
6. Legislative Report T. Barry
7. Public Comment Chairperson
8. Adjournment Chairperson

Providing for Michigan's Safety in the Built Environment

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Board of Mechanical Rules

Page 2

March 19, 2008

The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact Claudia Tenny at 517/241-9325 at least (10) working days before the event.



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

**BOARD OF MECHANICAL RULES
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
BUREAU OF CONSTRUCTION CODES**

Conference Room 3
2501 Woodlake Circle
Okemos, Michigan 48864

MINUTES

January 23, 2008
9:00 a.m.

MEMBERS PRESENT

Mr. H. Edward Bartram
Mr. Joseph Connors
Mr. Lawrence Hale II
Mr. Charles Inman
Mr. Robert Jagenberg
Mr. Patrick Maher
Mr. Mark Mangione
Mr. Michael Ogletree
Mr. George B. Shields
Mr. Christopher Stockwell
Mr. Charles Wash
Mr. Donald Welch

MEMBERS ABSENT

Mr. Gregory Parker
Mr. William Steele

DRAFT

**MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH PERSONNEL
ATTENDING**

Mr. Tennison B. Barry, Chief, Mechanical Division, Bureau of Construction Codes
Ms. Claudia Tenny, Secretary, Mechanical Division, Bureau of Construction Codes
Mr. Jonathon Paradine, Mechanical Division, Bureau of Construction Codes

OTHERS IN ATTENDANCE

Mr. Stephen Wylie, Consumers Energy
Mr. Lynn Briggs, SMACNA/MIAM
Mr. Mark Estrella, Tyco Fire & Building Products
Mr. David Horvath
Mr. Thomas Aurich
Mr. Bill Meyer, Shambaugh & Son, Inc. Division of Michigan's Safety in the Built Environment

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Board of Mechanical Rules

Page 2

January 23, 2008

Mr. James Urban, Attorney

1. CALL TO ORDER AND DETERMINATION OF QUORUM

Mr. Robert Jagenberg, Chairperson, called the meeting to order at 9:00 a.m. Roll was called and a quorum was determined.

2. APPROVAL OF MINUTES

Mr. Wash made a **MOTION** to approve the minutes of the November 14, 2007 meeting seconded by Mr. Welch. **MOTION CARRIED.**

3. ELECTION OF OFFICERS

Mr. Jagenberg nominated Mr. Bartram for Vice Chairperson and seconded by Mr. Connors. There being no further nominations, Mr. Bartram was unanimously elected. Mr. Connors nominated Mr. Hale for the office of Secretary, seconded by Mr. Inman. There being no further nominations, Mr. Hale was unanimously elected.

4. APPLICANT FOR REGISTRATION

DRAFT

Mr. Bartram made a **MOTION** to approve the following for registration as Mechanical inspector, seconded by Mr. Inman. **MOTIN CARRIED.**

Mr. Brian A. Klug

5. PRODUCT APPROVAL

Document M-08-01—Mr. Mark Estrella appeared before the Board representing Tyco Fire & Building Products. Mr. Barry referred to material presented and described the product. Mr. Estrella answered questions from various Board members. Mr. Bartram made a **MOTION** to approve the product with staff recommendations 1) Must be installed to the Michigan Mechanical Code and 2) Must be installed to the installation instructions. **MOTION** was seconded by Mr. Connors. **MOTION CARRIED.**

6. OLD BUSINESS

Document M-07-29, David Vermillion and Document M-07-30, Reginald T. McKinney, tabled at the 11/14/07 meeting remain tabled until the March 19, 2008 meeting.

Board of Mechanical Rules

Page 3

January 23, 2008

Document M-07-32—David Horvath (tabled 11/14/07). A **MOTION** was made by Mr. Welch and seconded by Mr. Bartram to take the appeal off the table. **MOTION CARRIED.** Mr. Horvath did attend the Board meeting and presented the Board with additional information regarding his work experience. The Board reviewed the additional information presented. Mr. Horvath answered questions from various Board members. Mr. Barry explained the mechanical contractor license in the service classification is a requirement of CSD-1 and the Boiler Division. A **MOTION** was made by Mr. Ogletree and seconded by Mr. Hale to approve Mr. Horvath for examination in the service classification only since the Boiler Division has been accepting his work in that area. **MOTION CARRIED.**

Document M-07-26 (tabled 11/14/07) Shane Keitz. A **MOTION** was made by Mr. Bartram and seconded by Mr. Stockwell to take the appeal off the table. **MOTIN CARRIED.** Mr. Barry reported that additional employment information had been received from Mr. Keitz and that his Mechanical Contractor License has been issued.

7. NEW BUSINESS

Document M-08-02 (addendum) Mr. Thomas Aurich appeared before the Board along with Mr. Bill Meyer of Shambaugh & Son L.P. and Mr. James Urban, Attorney, to appeal the denial by staff of his application for Mechanical Contractor Licensing Examination. Mr. Barry explained the basis of staff denial to take examinations in classifications #1, Hydronic heating & cooling & process piping, #2, HVAC Equipment, #5, Limited heating service and #9, Fire suppression due to lack of work experience required by Act 192. Additional information was presented which the Board reviewed. Mr. Jim Urban addressed the Board representing Mr. Aurich and Shambaugh & Son L.P. Mr. Urban expressed his opinion that the experience presented should allow Mr. Aurich to sit for the examination. Mr. Urban also expressed his disagreement with sec 7 of the Act requiring a business to have only one contractor of record. Mr. Urban also spoke to the operation of Shambaugh & Son and the responsibilities required of the applicant. Mr. Aurich addressed the Board regarding his employment history and answered questions from various Board members. Mr. Urban again expressed his opinion regarding the requirements of the Act. Mr. Barry responded. There was discussion from various Board members. A **MOTION** was made by Mr. Bartram and seconded by Mr. VanOsten to accept the staff recommendation and deny the appeal. **MOTION CARRIED.**

Mr. Welch raised the issue of BCC contention that a representative of the State Fire Marshall's office not be represented on the Board of Mechanical Rules. He asked for discussion and opinions of the Board. Mr. Barry responded as to the status of the

Board of Mechanical Rules

Page 4

January 23, 2008

recommendation. It was Mr. Welch's opinion that BCC was attempting to red-line the Fire Marshall or his representative's presence on the Board with the ad hoc committee. Mr. Lynn Briggs spoke to draft five of the ad hoc committee and explained reasoning behind the proposed change. Mr. Briggs also raised the issue of where to draw the line between the limited and unlimited refrigeration service classifications and also the issue of inspectors having an interest, directly or indirectly in a construction firm. All these issues are still under discussion by the committee. Mr. Briggs also reported that the Legislature just passed and the Governor signed significant changes to the Homebuilders Act

Mr. Welch informed the Board of Act 197 of PA 2006 approved by the Governor with the effective date of June 19, 2006. Mr. Welch informed that the Act did approve the Fire Marshall or Fire Marshall's designee on the Board of Mechanical Rules. There was discussion by various Board members.

8. **LEGISLATIVE REPORT**

Mr. Barry referred to the Homebuilders Act to take effect on June 1, 2008.

9. **PUBLIC COMMENT**

DRAFT
Mr. Lynn Briggs expanded on the various aspects of the Homebuilders Act. Mr. Bartram inquired on the progress of the Residential Code. Mr. Barry responded that the energy code was holding up progress. Mr. Briggs reported there is a bill in the legislature that would require the Public Service Commission to write energy efficient standards for buildings in the state. The authority is presently with the Bureau of Construction Codes to adopt codes.

10. **ADJOURNMENT**

A **MOTION** was made by Mr. Hale to adjourn the meeting, seconded by Mr. Wash.
MOTION CARRIED.

Next Board of Mechanical Rules Meeting March 19, 2008

APPROVED

DATE

Mr. Robert Jagenberg, Chairperson

Document #08-31e

MECHANICAL INSPECTORS

**5/14/08 bmr
05/07/08 ccc**

SMITH, Jeffrey A.
Contractor License #7115731
Classifications 2 & 5
8,000+ hours HVAC
Huron County



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

October 25, 2007

M-07-29

TO: Members of the Board of Mechanical Rules
FROM: Tennison B. Barry, Chief, Mechanical Division
SUBJECT: Background Information

APPLICANT REPRESENTATIVE:

David R. Vermillion

PROJECT:

Report of Administrative Law Judge

AUTHORITY:

The Forbes Mechanical Contractors Act of 1984 as Amended, being Act 192 of the Michigan Compiled Laws.

REQUEST:

Staff request, that the Board of Mechanical Rules accept the recommendation of the Administrative Law Judge.

APPLICABLE RULE:

R 338.903a of the Board of Mechanical Rules License Examination Procedures

RECOMMENDATION:

It is recommended that Mr. Vermillion's Mechanical Contractor License be revoked.



STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

KEITH W. COOLEY
DIRECTOR

February 26, 2008

Mr. David Vermillion
1464 Secord Dam Road
Gladwin, MI 48624

Dear Mr. Vermillion:

On March 19, 2008, the Board of Mechanical Rules will take action on the report and recommendation of the Administrative Law Judge regarding your Mechanical Contractor License that has been tabled on November 14, 2007 and January 23, 2008.

If you would like input on this action, you should be present at the Okemos Office Building, 2501 Woodlake Circle, Okemos, Michigan at 9:00 a.m. in Conference Room 3.

The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact the Mechanical Division at 517/241-9325 at least (10) working days before the event.

If I can be of further assistance, you may contact me.

Sincerely,

Tennison B. Barry
Tennison B. Barry, Chief
Mechanical Division

TBB/cct

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JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

January 8, 2008

Mr. David Vermillion
1464 Secord Dam Road
Gladwin, MI 48624

Dear Mr. Vermillion:

On January 23, 2008, the Board of Mechanical Rules will take action on the report and recommendation of the Administrative Law Judge regarding your Mechanical Contractor License that was tabled at their meeting on November 14, 2007.

If you would like input on this action, you should be present at the Okemos Office Building, 2501 Woodlake Circle, Okemos, Michigan at 9:00 a.m. in Conference Room 3.

The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact the Mechanical Division at 517/241-9325 at least (10) working days before the event.

If I can be of further assistance, you may contact me.

Sincerely,

Tennison B. Barry
Tennison B. Barry, Chief
Mechanical Division

TBB/cct

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JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

November 20, 2007

Mr. David Vermillion
1464 Secord Dam Road
Gladwin, MI 48624

Dear Mr. Vermillion:

On November 14, 2007, the Board of Mechanical Rules delayed taking licensing action against your Mechanical Contractor License until you are able to be present at the meeting.

The Board will make a decision regarding licensing action at their January 23, 2008 meeting.

If you have any questions, you may contact the Mechanical Division at (517) 241-9325.

Sincerely,

Tennison B. Barry
Tennison B. Barry, Chief
Mechanical Division

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STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

KEITH W. COOLEY
DIRECTOR

October 25, 2007

Mr. David Vermillion
1464 Secord Dam Road
Gladwin, MI 48624

Dear Mr. Vermillion:

On November 14, 2007 the Board of Mechanical Rules will take action on the report and recommendation of the Administrative Law Judge regarding your Mechanical Contractor License.

The meeting will be at the Okemos Office Building, 2501 Woodlake Circle, Okemos, Michigan at 9:00 a.m. in Conference Room 3.

The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact the Mechanical Division at 517/241-9325 at least (10) working days before the event.

If I can be of further assistance, you may contact me.

Sincerely,

Tennison B. Barry
Tennison B. Barry, Chief
Mechanical Division

TBB/cct

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**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2007-286
Bureau of Construction Codes, Petitioner	Agency No.	06-087-M
v	Agency:	Bureau of Construction Codes
David R. Vermillion Mechanical Contractor License No. 71-04310, Respondent	Case Type:	Sanction Revocation

Issued and entered
this 12th day of July 2007
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL HISTORY

This is a proceeding held pursuant to Sections 11(1) of 1984 PA 192, as amended, the Forbes Mechanical Contractors Act (Act 192), MCL 338.981 and Section 92 of 1969 PA 306, as amended, the Administrative Procedures Act (APA), MCL 24.292.

The purpose of this review is to consider the Petitioner's proposal "for the imposition of penalties and remedies provided in the State Construction Code Act, and in the Mechanical Contractors Act including imposition of a civil fine pursuant to the State Construction Code Act and suspension, denial or revocation of [Respondent's] mechanical contractors license, and restitution pursuant to the Mechanical Contractors Act." See Petitioner's January 23, 2007, Notice of Intent, page 5.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 9, 2007, Petitioner requested a hearing to present evidence to support its position that Respondent's actions violated Act 192 by the conduct alleged in Counts I through III of the January 23, 2007, Notice of Intent.

Pursuant to Section 92 of the APA, a compliance conference was scheduled for February 22, 2007, to provide Respondent an opportunity to show compliance with all lawful requirements. Respondent did not appear for the conference.

The matter was then scheduled for hearing on July 3, 2007. Petitioner appeared, represented by Assistant Attorney General Richard Gartner. He was accompanied by Gerrit Bakker, Bureau of Construction Code Analyst, Tension Barry, Chief of the Mechanical Division, and John Paradine, Mechanical Inspector. Respondent Vermillion did not appear.

Section 11(4) of Act 192, MCL 338.981(4), permits hearings in accordance with the procedures applicable to the trial of contested cases under the APA. Section 72 of the APA provides:

(1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

The State Office of Administrative Hearings and Rules' records show that notice of the hearing scheduled for July 3, 2007, was properly mailed on April 30, 2007, to the Respondent's address of record:

David R Vermillion
1464 Secord Dam Road
Gladwin, MI 48624

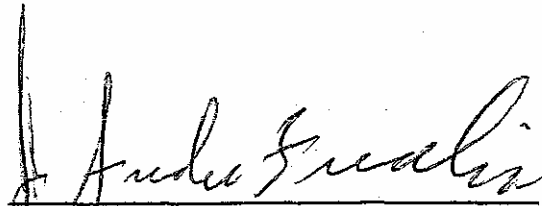
The postal authorities did not return this notice as undeliverable. The Respondent did not request an adjournment of the hearing.

As permitted by Section 72 of the APA, Petitioner's Attorney filed a Motion for a default judgment. In support of this Motion, Petitioner presented the testimony of Mechanical Inspector John Paradine. Mr. Paradine testified in detail concerning his observations on December 13, 2005 at a restaurant DeRosiles Mexican American Cuisine in Brooklyn, Michigan. At that time, he observed Respondent servicing make-up air equipment and noted the recent installation of a commercial exhaust hood and duct work. After investigation, Mr. Paradine determined that Respondent did not have a license to install gas-fired make up equipment. Also, while he had a license to install an exhaust hood and duct work, Respondent did not obtain a permit for this work in advance as required by Section 106.1 of the Mechanical Code. Finally, Respondent did not obtain plan review of construction plans in advance as required by Section 106.3.1 of the Mechanical Code.

Based on Petitioner's Motion for a default judgment, Respondent's failure to appear, and Petitioner's proofs, I find that Petitioner has established the allegations alleged in Counts I through III of the Notice of Intent. The record establishes violations of Act 192 as well as the Michigan Mechanical Code. These violations permit Board sanctions pursuant to Section 16 of Act 192.

RECOMMENDED DECISION

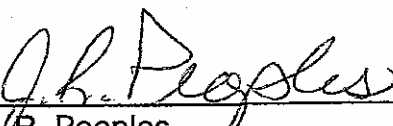
I recommend the Board of Mechanical Rules find Respondent violated Act 192. I also recommend the Board revoke Respondent's Mechanical Contractors Limited License No. 71-04310.

A handwritten signature in cursive script, appearing to read "J. Andre Friedlis", written over a horizontal line.

J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 12th day of July, 2007.



J/R. Peoples
State Office of Administrative Hearings and Rules

David R Vermillion
1464 Secord Dam Road
Gladwin, MI 48624

Gerrit Bakker
Bureau of Construction Codes
P.O. Box 30254
Lansing, MI 48909

Jon Paradine
Bureau of Construction Codes
P.O. Box 30254
Lansing, MI 48909

Richard P Gartner
Department of Attorney General
Labor Division
7th Floor Williams Bldg.
P.O. Box 30736
Lansing, MI 48909



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

October 25, 2007

M-07-30

TO: Members of the Board of Mechanical Rules

FROM: Tennison B. Barry, Chief, Mechanical Division

SUBJECT: Background Information

APPLICANT REPRESENTATIVE:

Reginald T. McKinney

JENW **PROJECT:**

Report of Administrative Law Judge

AUTHORITY:

The Forbes Mechanical Contractors Act of 1984 as Amended, being Act 192 of the Michigan Compiled Laws.

REQUEST:

Staff requests that the Board of Mechanical Rules modify the recommendation of the Administrative Law Judge. This request is based on information obtained after the Administrative action.

APPLICABLE RULE:

R 338.903a of the Board of Mechanical Rules License Examination Procedures

RECOMMENDATION:

It is recommended that no action is taken against Mr. McKinney's Mechanical Contractor License.



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

February 26, 2008

Mr. Reginald T. McKinney
210 South Second St.
Saginaw, MI 48607

Dear Mr. McKinney:

On March 19, 2008, the Board of Mechanical Rules will take action on the report and recommendation of the Administrative Law Judge regarding your Mechanical Contractor License that has been tabled on November 14, 2007 and January 23, 2008.

If you would like input on this action, you should be present at the Okemos Office Building, 2501 Woodlake Circle, Okemos, Michigan at 9:00 a.m. in Conference Room 3.

The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact the Mechanical Division at 517/241-9325 at least (10) working days before the event.

If I can be of further assistance, you may contact me.

Sincerely,

Tennison B. Barry
Tennison B. Barry, Chief
Mechanical Division *TB*

TBB/cct

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JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

January 8, 2008

Mr. Reginald T. McKinney
210 South Second St.
Saginaw, MI 48607

Dear Mr. McKinney:

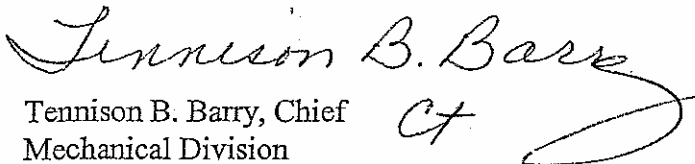
On January 23, 2008, the Board of Mechanical Rules will take action on the report and recommendation of the Administrative Law Judge regarding your Mechanical Contractor License that was tabled at their meeting on November 14, 2007.

If you would like input on this action, you should be present at the Okemos Office Building, 2501 Woodlake Circle, Okemos, Michigan at 9:00 a.m. in Conference Room 3.

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Sincerely,


Tennison B. Barry, Chief
Mechanical Division

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JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

November 26, 2007

Mr. Reginald T. McKinney
210 South Second St.
Saginaw, MI 48607

Dear Mr. McKinney:

On November 14, 2007, the Board of Mechanical Rules delayed taking licensing action against your Mechanical Contractor License to allow violations to be corrected.

The Board will make a decision regarding licensing action at their January 23, 2008 meeting.

If you have any questions, you may contact the Mechanical Division at (517) 241-9325.

Sincerely,

Tennison B. Barry
Tennison B. Barry, Chief
Mechanical Division

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JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

October 25, 2007

Mr. Reginald T. McKinney
210 South Second St.
Saginaw, MI 48607

Dear Mr. McKinney:

On November 14, 2007 the Board of Mechanical Rules will take action on the report and recommendation of the Administrative Law Judge regarding your Mechanical Contractor License.

The meeting will be at the Okemos Office Building, 2501 Woodlake Circle, Okemos, Michigan at 9:00 a.m. in Conference Room 3.

The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact the Mechanical Division at 517/241-9325 at least (10) working days before the event.

If I can be of further assistance, you may contact me.

Sincerely,

Tennison B. Barry
Tennison B. Barry, Chief
Mechanical Division

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**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2007-292
Bureau of Construction Codes, Petitioner	Agency No.	06-0621-M
v	Agency:	Bureau of Construction Codes
Reginald T. McKinney D/b/a Reggie & Son Heating & Air Conditioning Mechanical Contractor License No. 71-09737, Respondent	Case Type:	Sanction Revocation

Issued and entered
this 18th day of September 2007
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL HISTORY

This is a proceeding held pursuant to Sections 11(1) of 1984 PA 192, as amended, the Forbes Mechanical Contractors Act (Act 192), MCL 338.981 and Section 92 of 1969 PA 306, as amended, the Administrative Procedures Act (APA), MCL 24.292.

The purpose of this review is to consider the Petitioner's proposal "for the imposition of penalties and remedies provided in the State Construction Code Act, and in the Mechanical Contractors Act, including imposition of a civil fine pursuant to the State Construction Code Act and suspension, denial or revocation of [Respondent's] mechanical contractors license, and restitution pursuant to the Mechanical Contractors Act." See Petitioner's November 21, 2006, Notice of Intent, page 5.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 13, 2007, Petitioner requested a hearing to present evidence to support its position that Respondent's actions violated Act 192 by the conduct alleged in Counts I, II, and III of the November 21, 2006, Notice of Intent.

Pursuant to Section 92 of the APA, a compliance conference was scheduled for December 21, 2006, to provide Respondent an opportunity to show compliance with all lawful requirements. Respondent did not appear for the conference.

The matter was then scheduled for hearing on September 11, 2007. Petitioner appeared, represented by Assistant Attorney General Richard Gartner. He was accompanied by Gerrit Bakker, Department Analyst, Scott Fisher, Director of the Office of Local Government & Consumer Services, and Ronald Wheatley, Building Official for Bridgeport Charter Township. Respondent McKinney did not appear.

Section 11(4) of Act 192, MCL 338.981(4), permits hearings in accordance with the procedures applicable to the trial of contested cases under the APA. Section 72 of the APA provides:

(1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

The State Office of Administrative Hearings and Rules' records show that notice of the hearing scheduled for September 11, 2007, was properly mailed on July 16, 2007, to the Respondent's address of record: Reginald T. McKinney, Reggie & Son Heating & Air Conditioning, 210 South Second Street, Saginaw, MI 48607.

The postal authorities did not return this notice as undeliverable. The Respondent did not request an adjournment of the hearing.

As permitted by Section 72 of the APA, Petitioner's Attorney filed a Motion for a default judgment. In support of this Motion, Petitioner offered Petitioner Exhibit 1, a chronology of events prepared by witness Wheatley listing his contacts with a complaining homeowner and review of the work performed by Respondent. Mr. Wheatley also presented testimony concerning his investigation.

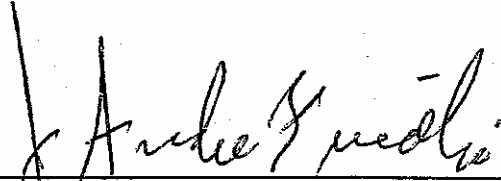
Mr. Wheatley testified in detail concerning Respondent's failure to obtain a permit, pay required fees, and call for a final inspection. Respondent also performed work outside the scope of his Mechanical license, in that he installed electrical and gas lines. Mr. Wheatley testified the homeowner paid \$4,100 to Respondent for Respondent's furnace and air conditioning installation work.

Based on Petitioner's Motion for a default judgment, Respondent's failure to appear, and Petitioner's proofs, I find that Petitioner has established the allegations alleged in Counts I, II, and III of the Notice of Intent. The record establishes violations of Act 192 as alleged in the Notice of Intent. These violations permit Board sanctions pursuant to Section 16 of Act 192.

RECOMMENDED DECISION

I recommend the Board of Mechanical Rules find Respondent violated Act 192. I also recommend the Board suspend Respondent's Mechanical Contractor License No. 71-09737 for a six month period. If during this period, Respondent makes restitution to the home owner in the amount of \$4,100 and provides proof of this payment

to Petitioner, Respondent may continue working under his license. If restitution is not made during the six month suspension period, I recommend Respondent's license be revoked.

A handwritten signature in black ink, appearing to read "J. Andre Friedlis", written over a horizontal line.

J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 18th day of September, 2007.



J. R. Peoples
State Office of Administrative Hearings and Rules

Gerrit Bakker
Bureau of Construction Codes
P.O. Box 30254
Lansing, MI 48909

Reginald T. McKinney
Reggie & Son Heating & Air
Conditioning
210 South Second St.
Saginaw, MI 48607

Richard P. Gartner
Department of Attorney General
Labor Division
7th Floor Williams Bldg.
P.O. Box 30736
Lansing, MI 48909

Ron Wheatley
Bridgeport Charter Township Bldg.
Dept.
6206 Dixie Highway
Bridgeport, MI 48722